

FILED 18 APR '13 10:25 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERRY LAMELL EZELL,

Petitioner,

3:13-cv-0605-TC

v.

FINDINGS AND
RECOMMENDATION

MARION FEATHER,

Respondent.

COFFIN, Magistrate Judge.

Petitioner, an inmate at FCI Sheridan, filed a petition under 28 U.S.C. § 2241 challenging the imposition of his enhanced federal sentence in 2008.

Although petitioner did not pay the filing fee or file an application to proceed *in forma pauperis*, the court grants petitioner *in forma pauperis* status *sua sponte*. However, for the reasons set forth below, petitioner's petition should be

denied and this proceeding should be dismissed.

Petitioner's claims in this proceeding are substantially identical to those alleged in a previous case - - Civ. No. 3:12-cv-1169-JE. By Order (#5) entered September 25, 2012, the petition in that case was denied and the proceeding was "summarily dismissed with prejudice to the filing of another § 2241 habeas action raising the same claims petitioner raises in this proceeding." Order (#5) p. 1. A Certificate of Appealability was denied. Id.

The claims in this proceeding are the same as those raised in 3:12-cv-1169-JE. Therefore, for the reasons set forth in that case and pursuant to Judge Jones Order (#5) petitioner's Petition (#1) should be denied and this proceeding should be dismissed with prejudice.


This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual

determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28 U.S.C. § 2253(c)(2).

DATED this 11 day of April, 2013.



Thomas M. Coffin
United States Magistrate Judge